Calendar No. 326

102D CONGRESS *1st Session*	SENATE	REPORT 102-219

RAIL SAFETY IMPROVEMENT INITIATIVES ACT OF 1991

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1571

NOVEMBER 18 (legislative day, NOVEMBER 13), 1991.—Ordered to be printed

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RAIL SAFETY IMPROVEMENT INITIATIVES ACT OF 1991

NOVEMBER 18 (legislative day, NOVEMBER 13), 1991.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1571]

The Committee on Commerce, Science, and Transportation to which was referred the bill (S. 1571) to amend the Federal Railroad Safety Act of 1970 to improve railroad safety, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The bill, as reported, would reauthorize the Federal rail safety program for 3 years, in the amount of $41,024,000 for fiscal year (FY) 1992, $53,116,000 for FY 1993, and $55,931,000 for FY 1994, for the Federal Railroad Administration (FRA) general safety operations. For railroad research and development, exclusive of research and development for magnetic levitation and other high-speed rail systems, the reported bill would authorize $10,748,000 for FY 1992, $15,167,000 for FY 1993, and $15,759,000 for FY 1994. The legislation also authorizes the Secretary of Transportation (Secretary) to request, receive, and use payments from non-Federal sources for certain safety training programs. The reported bill also would make certain changes and improvements in the Federal Rail Safety Act of 1970 (1970 Safety Act).

BACKGROUND AND NEEDS

The Department of Transportation (DOT), acting through FRA, is responsible for rail safety. The 1970 Safety Act consolidated and clarified DOT's regulatory authority over all areas of railroad

safety, and granted to it broad inspection, injunctive, and penalty powers.

During the 100th Congress, Congress enacted legislation, reported by the Committee, that substantially strengthened the 1970 Safety Act. That legislation, the Rail Safety Improvement Act of 1988 (RSIA) [Public Law 100–342], contained a number of significant provisions, including those which: provided the FRA with first-time authority to sanction or fine individuals (labor and management) for violations of safety laws; increased the maximum civil penalty for safety violations from $2,500 to $10,000 per day per violation, with a superpenalty of $20,000 for gross negligence or a pattern of repeated violations; imposed a new penalty for tampering with or disabling safety devices; required a rulemaking on licensing or certification of engineers; provided access to the National Driver Register to ensure operator qualifications; ensured Federal funding for certain safety-related improvements on Amtrak; required the imposition of automatic train controls on the Northeast Corridor; mandated the certification of pretrip cab and locomotive inspections; directed rail-highway grade-crossing improvements; and provided greater protection for rail workers, including those who report safety violations. Increased funding for the Federal rail safety program also was authorized as part of this legislation. The RSIA was the first major revision by Congress of the 1970 Safety Act.

During the 101st Congress, $46.9 million was authorized in H.R. 5835, enacted into law as the Omnibus Budget Reconciliation Act of 1990, for the Rail Safety Program for FY 1991.

In addition to considering levels of funding for the next reauthorization cycle, some of the issues raised by various parties interested in railroad safety during the 102d Congress have included FRA's implementation of the RSIA, the status of FRA's enforcement efforts, locomotive crashworthiness and working conditions, the Hours of Service Act, repeal of the older safety laws which predate the 1970 Safety Act, and the Local Rail Freight Assistance Program (LRFAP).

In this regard, the RSIA required a number of major rulemakings by FRA. While the Committee recognizes the scope of the regulatory workload imposed on FRA, it remains concerned about the delays in completing rulemakings on bridge and grade crossing safety.

The Committee also has directed its attention to the timeliness and adequacy of FRA's enforcement actions. This interest was prompted, in part, by an in-depth U.S. General Accounting Office (GAO) audit of FRA's Enforcement Program. The GAO report concluded that recurring problems found by FRA at those railroads cited indicated that FRA's enforcement activities did not ensure compliance with Federal safety regulations. In addition, GAO found that FRA does not impose and settle civil penalties in a timely manner. FRA has responded to some of the findings in the GAO report. Many of the concerns expressed by GAO are being addressed by implementation of FRA's new National Inspection Plan (NIP). The Committee is optimistic that the NIP will allow FRA systematically to focus its limited resources on the railroads and regions with the greatest safety risks.

GAO also noted that FRA potentially could reduce the workload problems in the Office of the Chief Counsel at FRA headquarters by experimenting with a pilot program which would permit penalty assessments to be handled at the regional level. The Committee is interested in whether this approach could reduce the case backlog and allow for the more timely resolution of penalty assessments and corrective actions.

The Hours of Service Act, signed into law in 1907, mandates the maximum number of hours rail employees are allowed to work in a given work cycle. The administration has recommended repeal of the Act, while at the same time converting the statutory language into FRA regulations. FRA notes that, under the current structure, it is prohibited from altering the work cycles in order to study ways to improve employees' working conditions. FRA argues that such a conversion of statutory authority would allow it to undertake such studies through rulemaking. The railroads oppose any change to the Hours of Service Act. Rail labor would prefer that Congress amend existing law with specific changes. This issue is still being reviewed by the Committee.

The LRFAP, administered by the FRA, provides Federal grants to States for the purchase and/or rehabilitation of light-density rail lines which otherwise would be abandoned as unprofitable. This program has provided continued rail service on many lines that otherwise would have been abandoned during the past 11 years, since regulatory reforms have allowed the railroads to spin off unprofitable lines.

The Local Rail Service Reauthorization Act [P.L. 101-213] authorized funding not to exceed $8 million for FY 1988, $10 million for FY 1989, and $15 million each for the fiscal years 1990 and 1991. In addition, it provided for the establishment of a uniform standard for judging all applications received beginning in FY 1991, and required that all proposed projects have at least a 1-to-1 cost-benefit ratio. Assistance could take the form of grants or loans. However, as an incentive to States to provide loans, the Federal share of repaid loan money is to go into a revolving fund to be used for future FRA-approved rail projects in the State. S. 1060 was introduced on May 14, 1991. S. 1060 authorizes appropriations for the LRFAP through FY 1994, in the amount of $16 million for FY 1992, $20 million for FY 1993, and $25 million for FY 1994.

Legislative History

The Surface Transportation Subcommittee held a hearing on July 16, 1991, on the reauthorization and oversight of the rail safety program. During this hearing, the Committee heard from FRA, the National Transportation Safety Board (NTSB), the Association of American Railroads (AAR), the American Short-Line Railroad Association, the Railway Labor Executives Association, and the United Transportation Union.

On July 26, 1991, Senator Exon introduced S. 1571, the Rail Safety Improvement Initiatives Act of 1991. Cosponsors of the bill are Senators Kasten, Burns, Rockefeller, Harkin, and Simon.

On July 30, 1991, the Committee met in open executive session to consider S. 1571. Without objection, S. 1571 was ordered reported.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 1571 would:

(1) Authorize appropriations for general safety operations in the amount of $41,024,000 for FY 1992, $53,116,000 for FY 1993, and $55,931,000 for FY 1994. The legislation also would authorize appropriations for railroad research and development, exclusive of the research and development for magnetic levitation and other high-speed rail, in the amount of $10,748,000 for FY 1992, $15,167,000 for FY 1993, and $15,759,000 for FY 1994. The bill would authorize the Secretary to request, receive, and use payments from non-Federal sources for certain safety training programs.

(2) Require the Secretary to establish operational procedures to ensure the effective use of sanctions authorized under the RSIA, and report to Congress on the extent such penalties are assessed. Also, the reported bill would clarify the applicability of the Secretary's enforcement authority under existing law.

(3) Authorize a pilot program to explore whether stationing legal counsel in FRA regional offices would expedite enforcement proceedings. Upon completion of the pilot program, the Secretary is required to submit a report to Congress on the potential benefits, if any, of using this approach.

(4) Include FRA enforcement personnel among those Federal officials and employees protected by Federal criminal law against assault, intimidation, or interference in the performance of their official duties.

(5) Direct the Secretary to report to Congress on the adequacy of voluntary industry standards to improve the safety of locomotive cabs and the effect of locomotive cab working conditions on railroad employees with regard to productivity and safety. Also, the report would consider the costs and benefits of equipping locomotives with selective safety appliances and equipment upgrades.

(6) Require the Secretary consult with the Secretary of Labor regarding the extent to which the FRA has or has not exercised jurisdiction to prescribe or enforce standards or regulations affecting occupational safety or health under Federal railroad safety laws. Within 6 months of the date of enactment of the legislation, rail labor, management, and other interested parties are to submit comments on regulatory gaps in railroad safety or occupational health coverage. Within 18 months of the date of enactment of the legislation, the Secretary is to submit a detailed report concerning the coordination of Federal activities in these areas. This report shall consider the extent to which standards issued by the Secretary of Labor for general industry could apply to issues not specifically addressed by FRA, and the implications of applying such standards to the rail industry.

(7) Require immediate NTSB access to event recorders following a reportable rail accident. If the NTSB does not communicate its intent to exercise this authority within 4 hours of receiving notification by the National Response Center, the railroad would be released from its obligation to the NTSB, and

the railroad or other investigating agencies would be able to access the event recorder data.

(8) Direct the Secretary to issue a report to Congress on the status of voice communications and advanced train control systems.

(9) Require the Northeast Corridor Safety Committee (NECSC) to meet at least once every 2 years and to report to Congress on its safety recommendations.

(10) Provide for judicial review of any final DOT action regarding railroads in Federal courts of appeal.

(11) Require the Secretary to review and revise, as necessary, DOT's rules on railroad power brakes. Specifically, the Secretary is to consider whether to require two-way, end-of-train devices to enable train crews to initiate rear braking, and whether to issue general dynamic braking equipment requirements or standards.

(12) Authorize appropriations for the LRFAP in the amount of $16 million for FY 1992, $20 million for FY 1993, and $25 million for FY 1994.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 12, 1991.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 1571, the Rail Safety Improvement Initiatives Act of 1991. Enactment of S. 1571 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum
(For Robert D. Reischauer).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1571.
2. Bill title: The Rail Safety Improvement Initiatives Act of 1991.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, July 30, 1991.
4. Bill purpose: S. 1571 would authorize appropriations of $51.8 million for fiscal year 1992, $68.3 million for fiscal year 1993, and $71.7 million for fiscal year 1993 for rail safety activities of the Department of Transportation, including research and development. In addition, the bill would authorize appropriations of $16 million

for fiscal year 1992, $20 million for fiscal year 1993 and $25 million for fiscal year 1994 for the local rail freight assistance program.

Also included in S. 1571 are provisions that would: clarify the enforcement authority of the Secretary of Transportation under the Federal Railroad Safety Act of 1970; require the Secretary to establish a pilot project in at least one region of the Federal Railroad Administration to determine the benefits of having legal counsel available in regional offices; require the Northeast Corridor Safety Committee to meet at least once every two years and make recommendations to the Congress; and require a number of new regulatory actions and reports.

5. Estimated cost to the Federal Government: Under Title X of the Omnibus Budget Reconciliation Act of 1990, and the costs of all activities authorized under the Federal Railroad Safety Act of 1970, other than research and development, are to be offset by fees imposed on railroads. That provision would apply to the amounts authorized in this bill for general rail safety operations—$41.0 million in 1992, $53.1 million in 1993, and $55.9 million in 1994. The following table shows the net budget impact of this bill.

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Authorization level:					
Rail safety research and development	10.7	15.2	15.8		
Local rail freight assistance program	16.0	20.0	25.0		
Total authorization level	26.7	35.2	40.8		
Estimated outlays	15.0	28.7	36.8	17.2	5.0

The costs of this bill fall within budget function 400.

Basis of estimate: CBO assumed that the full amounts authorized would be appropriated prior to the beginning of each fiscal year. Outlays are based on historical spending patterns.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. All the costs authorized by this bill are subject to appropriations, so CBO estimates that enactment of H.R. 2607 would not affect direct spending or receipts. Therefore pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Marjorie Miller.

11. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The legislation would clarify that the Secretary's safety enforcement authority applies not only to rail employees (management and labor), but also to agents of the railroad, such as (1) owners, manufacturers, and lessees of railroad equipment, track, or facilities, and (2) independent contractors that provide goods or services to a railroad. The Committee estimates that at least 174,000 individuals would be covered by this legislation, although this number could increase depending upon the engagement by railroads of outside agents or contractors.

ECONOMIC IMPACT

The economic impact of the legislation will primarily affect the FRA, railroad companies, railroad employees, and independent contractors that provide goods or services to the railroads. Such groups may incur costs associated with penalties and related administrative and judicial review processes. FRA also could incur some additional administrative and research costs associated with new reports to Congress and the regional enforcement pilot program. Authorization levels, which are offset by a railroad users fee pursuant to the Omnibus Budget Reconciliation Act of 1990, are designed to permit FRA to accelerate action on its current safety regulatory agenda and to move forward on administrative, and research and development, efforts mandated by this legislation.

PRIVACY

This legislation would not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

With respect to paperwork requirements, the Committee does not foresee any significant increase, although the reported bill would require a number of studies and reports.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

This section states that the short title of the reported bill is the "Rail Safety Improvement Initiatives Act of 1991."

SECTION 2—AUTHORIZATON FOR APPROPRIATIONS

The bill as reported would authorize appropriations for FY 1992, FY 1993, and FY 1994, for the FRA railroad safety program and railroad research and development, exclusive of the research and development for magnetic levitation and other high-speed rail systems. The authorization levels for FY 1992 would be $41,024,000 for FRA's general safety operations, plus $10,748,000 for railroad research and development. For FY 1993, the reported bill would authorize appropriations of $53,116,000 for general safety operations, plus $15,167,000 for railroad research and development, and for FY 1994, $55,931,000 for general safety operations, plus $15,759,000 for railroad research and development. In addition, the Secretary is

authorized to request, receive, and use payments from non-Federal sources for expenses incurred in training certain non-Federal safety employees.

There are several factors to consider in assessing these authorization levels. The FRA Administrator testified that FRA is behind on its regulatory agenda and that new regulatory and study requirements contained in the legislation would further burden FRA resources and staff. Additional funding is required in future years to implement railroad safety improvements. For example, the bill as reported would authorize a pilot program to explore the recommendation made in a recent GAO report on weaknesses in the FRA safety enforcement program that FRA should consider using regional field personnel directly to enforce new and existing laws and regulations. Also, GAO suggested that FRA work to ensure more uniform and timely enforcement activities. Also, the authorization levels in the reported bill contain funding increases proposed by FRA for safety research and development. Specifically, the increased funding levels would permit the FRA to place greater emphasis on human factor research and innovative means of preventing grade-crossing accidents, and also to continue ongoing exploration of track-vehicle interaction and basic research for track and equipment safety.

SECTION 3—PENALTY PROVISIONS

Subsection (a) of this section amends section 209(a) of the 1970 Safety Act to clarify that the Secretary's enforcement authority (civil penalties, injunctive relief, compliance orders, and emergency orders) under the 1970 Safety Act applies to any person who violates a rule, regulation, order, or standard issued under that Act. Specifically, this section would clarify that the parenthetical list after the word "person" is language of illustration. It adds as additional illustrations two categories of persons that are likely to be in a position to commit violations: (1) owners, manufacturers, and lessees of railroad equipment, track, or facilities (e.g., an owner of track over which a railroad operates); and (2) independent contractors that provide goods or services to a railroad (e.g., a company that contracts to provide signal maintenance services). While FRA believes that all categories of persons are covered by the existing statute, this provision would make this authority explicit in order to prevent needless litigation over congressional intent and make clear to certain categories of persons that they need to be in compliance with the 1970 Safety Act and rules and orders issued pursuant thereto.

The purpose of section 3 is to clarify that FRA has enforcement authority over any entity that may violate rail safety orders or rules. Some have raised the concern that this clarification would allow the argument that contractors also should be covered by other Federal rail programs, such as the Federal Employers' Liability Act and the railroad retirement law. This is not the Committee's intent. In fact, the inclusion of the word "independent" immediately before the word "contractor" in the reported bill is intended to make clear that, while such persons do provide goods and services to railroads, they do not work for the railroad and there-

fore are not to be considered railroad employees for purposes of the 1970 Safety Act or any other Federal statute.

Also, the reported bill under subsection (b) of this section would require the Secretary to ensure more effective use of individual sanctions for safety violations and to submit a report by January 1, 1994, to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce on the extent to which those sanctions have been used. The Committee is concerned that FRA has issued only two civil penalties and has pursued two disqualification actions against individuals since the RSIA created this authority in 1988.

SECTION 4—REGIONAL ENFORCEMENT PILOT PROJECT

This section requires the Secretary to establish a pilot project in at least one FRA region to determine the benefits to the Federal railroad safety program of having legal counsel available in the FRA regional offices for the purpose of carrying out safety enforcement activities that otherwise would be handled at FRA headquarters. The regional attorney would have the ability to perform the initial case review, assess penalties, settle cases, and provide legal advice on enforcement actions. The pilot program would be completed within 18 months of the date of enactment of the legislation, with a report to Congress on the results within 2 years of the date of enactment.

SECTION 5—PROTECTION OF RAILROAD SAFETY ENFORCEMENT PERSONNEL

This section would amend section 1114 of title 18, U.S. Code, to include FRA enforcement personnel among those Federal officials and employees protected by Federal criminal law against assault, intimidation, or interference in the performance of their official duties. FRA field personnel are interested in this protection, especially since the provision for individual liability for violations of the railroad safety laws has created an increased fear of verbal and physical assaults against these law enforcement personnel.

SECTON 6—LOCOMOTIVE CRASHWORTHINESS AND WORKING CONDITIONS

This section amends section 202 of the 1970 Safety Act to add a new subsection (r). Under this new subsection, the Secretary would be required to issue, within 24 months of the date of enactment of the legislation, a report on the status of efforts to improve locomotive cab safety and environmental conditions. the report would assess the adequacy of voluntary industry crashworthiness standards adopted by the AAR and the extent to which locomotive conditions affect safe railroad operations and productivity. Research and analysis, using computer modeling and full-scale crash testing, would be used as appropriate to consider the costs and benefits associated with equipping locomotives with the following equipment: braced collision posts; rollover protection devices; deflection plates; shatterproof windows; readily accessible crash refuges; uniform sill heights; anticlimbers, or other equipment designed to prevent overrides resulting from head-on locomotive collisions; equipment to deter postcollision entry of flammable liquids into locomotive cabs;

and other devices intended to provide crash protection for occupants of locomotive control compartments. This section also requires the report to include a statement on the Secretary's plan for related regulatory action or on the reasons why such action is unnecessary.

SECTION 7—RAILROAD OCCUPATIONAL SAFETY AND HEALTH

The Occupational Safety and Health Act of 1970 (OSHA) gave the Secretary of Labor broad general authority to regulate working conditions that affect the occupational safety and health of employees. When OSHA was passed, Congress also recognized the existence of similar authority in other Federal agencies. Specifically, section 4(b)(1) of OSHA provides that OSHA shall not apply to working conditions in cases where another Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

The primary mission of FRA is to ensure safe railroad operations for railroad employees, customers, and the public. Given its mission, FRA should be the agency chiefly responsible for ensuring the safe working conditions or railroad employees. During the Committee's hearings, however, some witnesses expressed concerns about possible gaps in and confusion over FRA's regulatory coverage in this area.

In this regard the FRA issued a Policy Statement on Railroad Occupational Safety and Health Standards in 1978. In this statement, FRA listed: (1) those categories of working conditions and associated hazards that the agency then was regulating; (2) those that it was not regulating, but which required close coordination with the Department of Labor; and (3) those over which it had no plans to exercise jurisdiction. The purpose of the statement was to articulate the dimensions of FRA's safety program and to clarify the respective role of FRA and the Department of Labor in assuring the occupational safety and health of railroad employees. In view of the concerns expressed regarding regulatory gaps and confusion over jurisdiction and the fact that considerable time has passed since FRA issued the statement, the Committee believes that FRA should review the statement to determine whether any revisions are necessary.

Specifically, section 7 adds a new subsection (s) to section 202 of the 1970 Safety Act to the Secretary to consult promptly with the Secretary of Labor to ensure that the Secretary of Labor is apprised of the extent to which the Secretary has exercised jurisdiction affecting occupational safety or health pursuant to the Federal railroad safety laws. Also, the Secretary would refer to the Secretary of Labor any information concerning safety or health hazards affecting railroad employees involving working conditions with regard to which FRA has not exercised jurisdiction. Concurrently, the Secretary would request public comment within 6 months of the date of enactment of the legislation concerning: (1) a description of specific material hazards relating to working conditions over which the Secretary has exercised general jurisdiction but which have not been addressed specifically; (2) a description of standards issued by the Secretary of Labor that would apply to

such working conditions in the absence of the Secretary's exercise of jurisdiction; and (3) a discussion of the potential impacts, including safety benefits, conflicts with current FRA rules, regulations, standards, or orders, creation of operational or other hazards due to the nature of the railroad work environment, and potential costs of the application of standards issued under OSHA to these working conditions. Within 18 months of the date of enactment of the legislation, the Secretary would report to Congress on the coordination of Federal activities and statutory enforcement with respect to the safety and health of railroad employees, including its findings based on these public comments.

SECTION 8—EVENT RECORDERS

The Committee recognizes that NTSB investigations have been hampered when available event recorder data packs were mishandled by railroad personnel. For example, after a December 1990 collision between an Amtrak train and a commuter train, 13½ minutes of critical data were obscured in this way. This section amends section 202(m) of the 1970 Safety Act to provide the NTSB with immediate access and the first opportunity to read all event recorders, recording media, and related components following any railroad accident reportable to the NTSB. The affected railroad would be required to preserve the event recorders and related equipment and could not permit anyone other than NTSB personnel to attempt to operate or read any event recorder or to otherwise extract data until the railroad is released from these obligations. The railroad would be permitted to release event recorder data if, within 4 hours after notification, the NTSB does not notify the railroad of its intent to exercise jurisdiction under this section. If the NTSB does exercise its right to immediate event recorder access, it also is to provide event recorder access to the railroad and other investigative agencies within a reasonable period of time. Violators of this section would be liable for civil penalties.

SECTION 9—VOICE COMMUNICATION AND ADVANCED TRAIN CONTROL SYSTEMS

The Committee believes that advanced train control systems have the potential to greatly improve railroad safety, as well as improve railroad operating efficiency. Accordingly, this section adds a new subsection (t) to section 202 of the 1970 Safety Act to require the Secretary within 12 months of the date of enactment of the legislation and, after consultation with the National Railroad Passenger Corporation, freight carriers, and rail equipment manufacturers, to submit a report to Congress on the status of voice communications systems available and in use, and on the advantages and disadvantages of requiring that all locomotives (and cabooses, where applicable) be equipped with such systems. The report also would describe the status of advanced train control systems which are being developed, the implications of such systems for effective railroad communications, and the need for minimum Federal standards to ensure that such systems are compatible nationwide and provide for positive train separation. Some concerns have been raised about the meaning of "compatible" in this context. The

Committee believes that it would be inappropriate to mandate use of a particular technology or to insist upon a standardized approach to such systems. Instead, the Committee's intent is to ensure safe operations and optimal mobility on the part of the railroad industry.

SECTION 10—NORTHEAST CORRIDOR SAFETY COMMITTEE

This section amends section 11 (c) and (d) of the RSIA to direct the NECSC to meet at least once every 2 years to consider and make recommendations, to the appropriate congressional committees at the beginning of each Congress, on matters involving the safety of the Northeast Corridor. The Committee believes that the NECSC, which originated in the RSIA in response to the 1987 Chase, MD, Conrail/Amtrak crash, should exist as a continuing forum for identifying and solving safety concerns unique to the Northeast Corridor.

SECTION 11—JUDICIAL REVIEW

This provision amends section 202(f) of the 1970 Safety Act in order to provide for direct review of FRA rules and orders in the Federal courts of appeal. A proceeding to review any final agency action taken under Federal railroad safety laws would be brought by filing a petition in the appropriate court of appeals. This section would not preclude the Secretary, through the Attorney General, from bringing an action in a district court where otherwise permitted.

SECTION 12—POWER BRAKE SAFETY

This section adds a new subsection (u) to section 202 of the 1970 Safety Act to provide that, within 18 months of the date of enactment of the legislation, the Secretary would be required to review and revise DOT's rules addressing railroad power brakes, considering: (1) whether to require two-way end-of-train devices, or similar equipment, to enable a train crew to initiate braking from the rear of a train; and (2) whether to issue requirements or standards regarding dynamic braking equipment. Within 2 years of the date of enactment of the legislation, the Secretary would report to Congress on the results of this review and any revisions, rules, or other actions taken in connection therewith.

SECTION 13—LOCAL RAIL FREIGHT ASSISTANCE PROGRAM

This section would amend section 5(q) of the DOT Act to authorize appropriations for the LRFAP in the amount of $16 million for FY 1992, $20 million for FY 1993, and $25 million for FY 1994.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL RAILROAD SAFETY ACT OF 1970

Section 202 of that Act

SEC. 202. RAIL SAFETY REGULATIONS.

(a) through (e) * * *

[(f) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5 of the United States Code.]

(f) Any final agency action taken under this title or under any of the other Federal railroad safety laws, as defined in section 212(e) of this title, is subject to judicial review as provided in chapter 7 of title 5, United States Code. Except as provided in section 203(e) of this title, any proceeding to review such final agency action shall be brought by filing a petition in the appropriate court of appeals. Such petitions shall be handled in the manner prescribed in chapter 158 of title 28, United States Code. Nothing in this section precludes the Secretary, through the Attorney General, from bringing an action in a district court when such action is permitted under this title.

(g) through (l) * * *

[(m)(1)(A) The Secretary shall, within 18 months after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within 1 year after such rules, regulations, orders, and standards are issued.

[(B) If the Secretary finds that it is impracticable to equip trains as required under subparagraph (A) within the time limit under such subparagraph, the Secretary may extend the deadline for compliance with such requirement, but in no event shall such deadline be extended past 18 months after such rules, regulations, orders, and standards are issued.

[(2) For the purposes of this subsection, the term "event recorders" means devices that—

[(A) record train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

[(B) are designed to resist tampering.]

(m) Following a railroad accident reportable to the National Transportation Safety Board, the Board shall have immediate access to event recorders, recording media of such recorders, and all train components related to event recorders, and shall have the first opportunity to read event recorder data and related materials. The railroad shall take all steps necessary to preserve such recorders and related equipment in accordance with rules established by the Board. In no case shall any person other than personnel of the Board attempt to operate such event recorder, or attempt to read or extract event recorder data, unless and until the Board has released the railroad from its obligations under this subsection If, within 4 hours after receiving notification by the National Response Center, the Board does not notify a railroad that the Board's employees are en route to the accident scene and that the Board intends to exercise

its right to immediate access to the railroad's event recorder, recording media, and related equipment, the railroad shall be released from its obligations under this subsection. Upon such release, the railroad and other agencies investigating the accident may operate the event recorder and read or extract event recorder data. If the Board exercises its right to immediate access to the railroad's event recorder, recording media, and related equipment, the Board shall provide access to these items to the railroad and other investigative agencies within a reasonable period of time. Any railroad or other person who violates this subsection shall be liable for a civil penalty under section 209.

(n) through (q) * * *

(r)(1) The Secretary shall, within 24 months after the date of enactment of this subsection, submit to Congress a report on the status of efforts to improve the safety of locomotive cabs. Such report shall assess—

(A) the adequacy of Locomotive Crashworthiness Requirements Standard S–580, adopted by the Association of American Railroads in 1989, in improving the safety of locomotive cabs; and

(B) the extent to which environmental and other working conditions in locomotive cabs affect productivity and the safe operation of locomotives.

(2) In carrying out the assessment required under paragraph (1)(A), the Secretary shall conduct research and analysis, including computer modeling and full-scale crash testing, as appropriate, to consider the costs and safety benefits associated with equipping locomotives with—

(A) braced collision posts;

(B) rollover protection devices;

(C) deflection plates;

(D) shatterproof windows;

(E) readily accessible crash refuges;

(F) uniform sill heights;

(G) anti-climbers, or other equipment designed to prevent overrides resulting from head-on locomotive collisions;

(H) equipment to deter post-collision entry of flammable liquids into locomotive cabs; or

(I) any other devices intended to provide crash protection for occupants of locomotive cabs.

(3) The report required under paragraph (1) shall include a statement of the Secretary's plans for related regulatory action or, if no regulatory action is planned, an explanation of why the Secretary considers such action unnecessary.

(s)(1) The Secretary shall consult with the Secretary of Labor to ensure that the Secretry of Labor is currently apprised of the extent to which the Secretary has exercised jurisdiction to prescribe or enforce rules, regulations, standards, or orders affecting occupational safety or health under this title or any other Federal railroad safety law.

(2) The Secretary shall promptly refer to the Secretary of Labor any information or credible allegation concerning safety or health hazards affecting railroad employees involving working conditions

as to which the Secretary has not exercised the jurisdiction described in paragraph (1).

(3) Upon enactment of this subsection, the Secretary shall publish in the Federal Register a request for comments from railroad labor, railroad management, and other interested persons regarding the matters described in paragraph (4) (A), (B), and (C). Such comments shall be submitted to the Secretary within 6 months after the date of enactment of this subsection.

(4) Not later than 18 months after the date of enactment of this subsection, the Secretary shall submit to the Congress a report concerning coordination of Federal activities with respect to the safety and health of railroad employees under this title, the other Federal railroad safety laws, and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). The Secretary shall include in the report—

(A) a description of any material hazards, or alleged material hazards, not currently addressed by a specific rule, regulation, order or standard, pertaining to working conditions with respect to which the Secretary has exercised the jurisdiction described in paragraph (1);

(B) a description of any standards issued by the Secretary of Labor under the Occupational Safety and Health Act of 1970 for general industry, or for construction, that would apply to such working conditions, absent the Secretary's exercise of jurisdiction; and

(C) a discussion of the extent to which application of standards issued under the Occupational Safety and Health Act of 1970 to such working conditions would—

(i) enhance safety;

(ii) conflict with rules, regulations, orders or standards issued by the Secretary;

(iii) result in any operational or other hazard due to the nature of the railroad work environment; and

(iv) impose excessive or unnecessary costs on the railroads and the public.

(t)(1) Within 12 months after the date of enactment of this subsection, the Secretary, after consultation with the National Railroad Passenger Corporation, freight carriers, and rail equipment manufacturers, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on voice communications and advanced train control systems.

(2) With respect to voice communications, such report shall—

(A) summarize the present technology in use and available for ensuring operationally effective voice communications between trains and between trains and train dispatchers located at railroad stations; and

(B) evaluate the advantages and disadvantages of requiring that every locomotive (and every caboose, where applicable) be equipped with a railroad voice communications system capable of permitting a person in the locomotive (or caboose) to engage in clear two-way communications with persons on following and leading trains and with train dispatchers located at railroad stations.

(3) With respect to advanced train control systems, the report shall—

(A) describe the status of advanced train control systems that are being developed, and assess the implications of such systems for effective railroad communications; and

(B) make recommendations with regard to the need for minimum Federal standards to ensure that such systems provide for positive train separation and are compatible nationwide.

(u)(1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to railroad power brakes, and within 18 months after the date of enactment of this subsection, shall revise such rules based on such safety data as may be presented during that review.

(2) In carrying out paragraph (1), the Secretary shall, at a minimum, consider—

(A) whether to require two-way end of train devices (or devices able to perform the same functions) to enable a train crew to initiate braking from the rear of a train; and

(B) whether to issue requirements or standards regarding dynamic braking equipment.

(3) The Secretary shall, within 2 years after the date of enactment of this subsection, report to the Congress on the results of the review conducted under paragraph (1) and any revisions of rules or other actions taken in connection therewith.

Section 209 of that Act

SEC. 209. PENALTIES.

(a) It shall be unlawful for any person **[**(including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)**]** *(including but not limited to a railroad; any manager, supervisor, or other employee or agent of a railroad; any owner, manufactorer, lessor, or lessee of railroad equipment, track, or facilities; or any independent contractor providing goods or services to a railroad)* to fail to comply with any rule, regulation, order, or standard prescribed by the Secretary under this title.

(b) through (f) * * *

Section 214 of that Act

[SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.

[(a) There are authorized to be appropriated to carry out this Act not to exceed $46,884,000 for fiscal year 1991.

[(b) Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available under expended.**]**

SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.

(a) There are authorized to be appropriated to carry out this Act not to exceed $41,024,000 for general safety operations, plus $10,748,000 for railroad research and development (except magnetic levitation and other high-speed rail research and development), for the fiscal year ending September 30, 1992; not to exceed $53,116,000 for general safety operations, plus $15,167,000 for railroad research and development (except magnetic levitation and other high-speed

rail research and development), for the fiscal year ending September 30, 1993; and not to exceed $55,931,000 for general safety operations, plus $15,759,000 for railroad research and development (except magnetic levitation and other high-speed rail research and development), for the fiscal year ending September 30, 1994. The Secretary is authorized to request, receive, and use payments from non-Federal sources for expenses incurred in training safety employees of private industry, State and local authorities, or other public authorities, other than State rail safety inspectors participating in training pursuant to section 206 of this title.

(b) Sums appropriated under this section for railroad research and development and automated track inspection are authorized to remain available until expended.

RAIL SAFETY IMPROVEMENT ACT OF 1988

Section 11 of that Act

SEC. 11. NORTHEAST CORRIDOR SAFETY COMMITTEE.

(a) through (b) * * *

[(c) Within 90 days after the date of enactment of this Act, the Secretary shall, in accordance with section 333 of title 49, United States Code, covene a meeting of rail carriers operating more than 150,000 train miles per year on the main line of the Northeast Corridor for the purpose of reducing through freight traffic on portions of such line used primarily for passenger traffic.]

(c) The Northeast Corridor Safety Committee shall meet at least once every two years to consider matters involving safety on the main line of the Northeast Corridor.

(d) [Within one year after the date of enactment of this Act] *At the beginning of the first session of the 103d Congress, and biennially thereafter,* the Secretary shall submit a report to the Congress on the status of efforts to improve safety on the main line of the Northeast Corridor pursuant to the provisions of this section. *The report shall contain the safety recommendations of the Northeast Corridor Safety Committee and the comments of the Secretary on those recommendations.*

(e) The Northeast Corridor Safety Committee shall cease to exist on January 1, 1999, or on such as the Secretary determines to be appropriate. The Secretary shall notify the Congress in writing of any such determination.

DEPARTMENT OF TRANSPORTATION ACT

Section 5 of that Act

LOCAL RAIL FREIGHT ASSISTANCE

SEC. 5. (a) through (p) * * *

(q) There are authorized to be appropriated to the Secretary for the purposes of this section not to exceed $15,000,000 for fiscal year 1991, *$16,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994.* Such sums as are appropriated are authorized to remain available until expended. No

funds are authorized to be appropriated under this subsection for [any period after September 30, 1991] *any period after the September 30, 1994.*

TITLE 18, UNITED STATES CODE

Section 1114 of that Title

§ 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any member of the Coast Guard, any employee of the Coast Guard assigned to perform investigate, inspection or law enforcement functions, *any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions,* any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, * * * shall be punished as provided under section 1111 and 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

TITLE 28, UNITED STATES CODE

Section 2341 of that Title

§ 2341. Definitions

As used in this chapter—

(1) through (2) * * *

(3) "agency" means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, the Interstate Commerce Commission, or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture *or the Secretary of Transportation*;

(C) the Administration, when the order was entered by the Martime Administration; and

(D) the Secretary, when the order is under section 812 of the Fair Housing Act.

Section 2342 of that Title

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) through (4) * * *

(5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code; [and]

(6) all final orders under section 812 of the Fair Housing Act[.]; *and*

(7) all final agency actions described in section 202(f) of the Federal Railroad Safety Act of 1970.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

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